Nichols Spared Death Penalty

Jury Reaches Impasse; Judge to Sentence Bombing Conspirator

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DENVER, Jan. 7—Terry L. Nichols was spared the death penalty today when federal jurors were unable to agree on whether the Oklahoma City bombing conspirator should pay for the crime with his life.

U.S. District Judge Richard P. Matsch dismissed the panel, which deliberated for 13 hours over two days before notifying him of the impasse, and said he will assume responsibility for sentencing Nichols.

Matsch cannot by law sentence Nichols to death for his role in the bombing of the Alfred P. Murrah Federal Building, in which 168 people were killed. The judge can, however, sentence Nichols to a maximum of life in prison without the possibility of release. He asked for recommendations from the prosecution and defense by Feb. 9 and promised a decision after that.

After the jury left the courtroom, Nichols's lawyers shook his hand, hugged him and patted him on the back. Nichols registered little reaction. Clearly distraught victims of the bombing held hands and wept in court, while a few feet away, the Nichols family smiled and embraced.

Matsch said the jurors, who were empowered to make a binding sentencing recommendation, disagreed on the issue that was a legal threshold for deciding on the death penalty—whether Nichols intended people to die in the blast.

The jury foreman, Niki Deutchman, described a panel tortured by doubts, wracked by dissension and deeply skeptical of the government's case. In a 70-minute news conference in a sun-dappled municipal park near her Denver neighborhood, Deutchman said the the seven women and five men were a divided and distraught group, rife with tension and discord, when the decision was taken from them.

Deutchman, an obstetrical nurse, also slammed the government for "dropping the ball" by not searching harder for other possible suspects in the bombing.

"The government wasn't able to prove beyond a reasonable doubt a whole lot of the evidence," said Deutchman, 47. "The government didn't do a

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good job of proving Terry Nichols was greatly involved in this."

The same jury just 15 days ago found that Nichols, 42, conspired to bomb the building on April 19, 1995, a conviction that carried the possibility of a death sentence. They also found him guilty of involuntary manslaughter in the deaths of the eight law enforcement officials. But in a split verdict that foreshadowed today's outcome, the jurors acquitted Nichols of murder, of using a weapon of mass destruction and of actually bombing the building.

Nichols's co-conspirator, Timothy J. McVeigh, was convicted last June in a separate trial on 11 counts of conspiracy and murder. He was sentenced to death.

"We of course regret the jury was unable to reach a unanimous decision," said Nichols's chief federal prosecutor, Larry Mackey, as his tense-looking team stood behind him after today's deadlock. "It falls to us now ... to press for the most appropriate sentence for this defendant."

Nichols's lead attorney, Michael Tigar, said, "The jury has spoken and the judge has given everybody an object lesson in how the American justice system works."

Moments later, a grinning Nichols family—three siblings and parents—posed for a family portrait in front of the courthouse. "It's a positive step for us," said Nichols's only sister, Susie McDonnell. "I guess that's what we hoped and prayed for."

A block away, those who lost relatives in the blast gathered at a church to console each other. "The biggest disappointment," said Roy Sells, who wife perished in the blast, "is that we can't end this thing."

Oklahoma County District Attorney Bob Macy told reporters in Oklahoma City that he will try Nichols on state charges that could still lead to the death penalty. "It's not over yet," Macy told those gathered at the bomb site.

Indeed, the jury's actions today ensured that one of the largest, most complex and most expensive federal cases in history is still not over. In the 33 months since a 4,000-pound bomb brought down the Murrah building, 30,000 witnesses have been interviewed, 3,000 court documents filed and tens of millions of federal dollars spent on the prosecution and court-appointed defense of McVeigh and Nichols.

Twenty-one children were finishing their milk and muffins in the federal building's day-care center when McVeigh parked a Ryder truck stuffed with explosives outside their windows. The former Amry sergeant detonated the massive ammonium nitrate and fuel bomb at 9:02 a.m., unleashing the deadliest act of domestic terrorism in U.S. history.

With hours of the blast, McVeigh was arrested on an unrelated weapons charge. Authorities promptly made the link to his Army buddy Nichols, who turned himself in on April 21. But despite substantial circumstantial evidence linking Nichols to the bomb components, prosecutors had their work cut out for them.

As Nichols's lawyers never tired of pointing out, the small-time military surplus dealer was at home with his family in Herington, Kan., when McVeigh ignited the deadly fuse.

Presenting 100 witnesses during the nine-week trial, prosecutors traced an intricate web of circumstantial evidence tying Nichols to McVeigh. They charged that together the men, in an escalating hatred toward the government, bought and stole explosives for their bomb, secreted them in storage lockers rented under aliases, and stashed a getaway car in Oklahoma City.

The Nichols defense put on an equally aggressive case, trying to confuse jurors with witnesses who insisted they saw McVeigh with men other than Nichols before the blast. Many of the descriptions matched the sketch of John Doe No. 2—the one-time suspect in the case who was never identified and never found. The government now says he does not exist. Defense attorneys also hammered home their contention that the government, in its zeal to solve the case, tailored evidence to fit its theory of the crime.

Deutchman indicated that at least some of the defense arguments stuck. "I think there were others

involved," she said.

Deutchman said the jury had a "big range of opinion" on the question of how deeply involved Nichols was in the bombing conspiracy, from "a very tiny amount to totally."

"It was difficult for jury members to interpret how involved Terry Nichols was," she said, "or how much he knew about the conspiracy.... It would have been fairly easy to make a decision about Timothy McVeigh's involvement, but it was not easy to make a decision about Terry Nichols's."

Holly Hanlin, another juror in the case, said the panel was almost evenly split into three factions favoring death, life in prison and letting the judge impose a sentence. Hanlin said she believed Nichols "was guilty and he deserves to pay for knowing" about the conspiracy, but that he was not the "mastermind or as fully involved as Tim McVeigh."

Of the government's case, Hanlin said "they could have done a better job. There were some things that wouldn't fit." Because of those holes in the case, she said, the government did not prove sufficient intent to warrant a death sentence.

Speaking of her own views, Deutchman said she was "very comfortable" with the verdict in which the jury exonerated Nichols of the more serious charges of murder and actually bombing.

"There were a lot of specific acts [alleged by the government] that I had doubts about," she said.

Members of the jury, she added, were troubled by the government's failure to prove decisively that Nichols helped construct the bomb, and some believed he was coerced into helping McVeigh during the early days of the conspiracy.

Deutchman called the Federal Bureau of Investigation "arrogant" and "sloppy" in the conduct of its investigation.

"I think the government's attitude ... is part of where all this comes from in the first place," said Deutchman, referring to the anti-government animus behind the bombing. "I think maybe it's time the government be more respectful ... and not with the attitude that we know and you don't, we have the power and you don't."

After her remarks, the Justice Department said in a written statement that the "FBI and the Justice Department have made every effort to identify those responsible for the bombing."

"That investigation led to two people....," the statement added. "The investigation is now closed, but the government remains prepared to follow any credible lead that may serve to resolve any unanswered questions in the case."

The jury had three sentencing options under the law: to unanimously condemn Nichols to death or life without release, or to hand the task back to Matsch with a recommendation for a lesser sentence. In order to reach a verdict of death, jurors by law had to first unanimously find that Nichols intentionally participated in an act that led to deaths, and that his intentions constituted reckless disregard for human life.

BY GARY CASKEY—REUTERS

Michael Tigar, center, and others on Terry L. Nichols's defense team stand outside the federal courthouse in Denver.

BY GARY CASKEY—REUTERS

Michael Tigar, center, and others on Terry L. Nichols's defense team stand outside Denver courthouse after judge said he will sentence bombing conspirator.

"I have decided that . . . you have had adequate opportunity to discuss it, to deliberate, and to decide. . . ," Matsch told the panel after it could not come to terms on Nichols's intent. "I am, in short, going discharge you. But I want to reemphasize that . . . being unable to get unanimity that there's been proof beyond a reasonable doubt on these necessary specific intentions . . . amounts to your decision."

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To read a time line of the Oklahoma City bombing case and to review Post coverage of the Nichols trial, click on the above symbol on the front page of The Post's Web site at www.washingtonpost.com